



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
c/o ██████████
██████████
████████████████████

DECISION

MPA/147195

PRELIMINARY RECITALS

Pursuant to a petition filed February 6, 2013, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for a speech generating device (SGD), a hearing was held on April 1, 2013, at Madison, Wisconsin. Hearings set for February 28 and March 21, 2013 were rescheduled at the petitioner's request.

The issue for determination is whether petitioner meets the criteria for an SGD.

PARTIES IN INTEREST:

Petitioner:

██████████
c/o ██████████
██████████
████████████████████

Petitioner's Representative:

Atty. Monica Murphy
Disability Rights Wisconsin
6737 W. Washington St., Suite 3230
Milwaukee, WI 53214

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Written submission of Theresa Walske, ST Consultant

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 17-year-old resident of Jefferson County who receives MA.
2. Petitioner is diagnosed with autism and Tourette's Syndrome. He is nonverbal.
3. In 2006 the MA program purchased a Dynavox SGD. Petitioner used the SGD regularly in the intervening years.
4. On October 26, 2012, ██████████ ██████████ ██████████ ██████████ requested prior authorization for a NovaChat 7 SGD at a cost of \$7,200 for petitioner. The "7" was an erroneous number. The

intent was to request a NovaChat 10D+. The cost and other descriptive factors were for the 10D+.

5. After rounds of back-and-forth with petitioner's speech therapist, the DHCAA denied the request by a letter dated January 18, 2013.
6. Petitioner's Dynavox SGD stopped working in October, 2012. Although school speech therapy notes continued to mention petitioner's "Dynavox," the school therapist knew that the Dynavox was dead, but she kept using the word as a generic term for the new SGD that was requested.
7. Through trials petitioner has shown the ability to utilize the NovaChat SGD. However, because it is more advanced than the Dynavox, he continues to need speech therapy services to learn the use the various functions of the device. In addition, continued therapy services will also help teach petitioner's family and school providers how to help petitioner use the device.

DISCUSSION

Durable medical equipment must be authorized by the DHCAA before the medical assistance program will pay for it. Wis. Admin. Code, §DHS 107.24. When determining whether a service is necessary, the division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Admin. Code, §DHS 107.02(3)(e) 1, 2, 3, 6, and 7. It is the provider's obligation to justify the provision of the services. Admin. Code, §DHS 107.02(3)(d)6.

The Department issued MA Update no. 2004-25 to inform providers the requirements for prior authorization approval of a speech generating device. The Update stated that a request needs to include a number of baseline measurements for receptive language skills, cognitive abilities, accuracy of processing information, and attention to task. In addition, purchase of a device requires a trial period of several weeks to determine if the person can use the device successfully.

The DHCAA denied the request for a number of reasons. First, there was concern about contradictory information provided by the [REDACTED] therapist and the school therapist, in particular concerning petitioner's ability to use an SGD and the condition of his old SGD. At the hearing it was made clear that the old SGD died in October, 2012, and that the school therapist referred to a "Dynavox" in a generic sense; in discussing the use of a "Dynavox" she was anticipating the use of a new device. The school therapist also affirmed petitioner's ability to use the device independently.

Second, the DHCAA was concerned that petitioner would be unable to use the more complicated NovaChat SGD. On the contrary, his therapist testified that petitioner's abilities have advanced beyond the old Dynavox, and the more complicated NovaChat is the best level device for his capabilities.

Third, there was concern that a longer trial period was necessary. At the hearing it was noted that petitioner has continued to utilize the device successfully throughout the appeal period, and the therapist testified vociferously that petitioner is capable of using the device.

It appears that the biggest conflict in this case is the use of standardized scores to describe the person's functioning. [REDACTED] staff testified that scores are not a reasonable standard for predicting whether a person can utilize and SGD. However, only the Department can change the criteria; the Division of Hearings and Appeals cannot do so.

In the end, I conclude that the requested SGD should be approved. Ms. Walske's case summary set out a ten-step test to determine whether an SGD can be approved, and she noted that eight of the ten steps were not proven in the request. However, at the hearing Mr. [REDACTED] went through the ten steps and explained in detail why petitioner met them. Because he has a working knowledge of petitioner and he testified in person, I simply have to give his opinion greater weight. Based upon the evidence provided at the hearing, I conclude that the NovaChat 10D+ should be approved.

I note to petitioner that Talk To Me Technologies will not receive a copy of this decision. In order to have the service approved, petitioner must provide a copy of this decision to the provider. The provider must then submit a *new* prior authorization request noting it is for a NovaChat 10D+, along with a copy of this decision, to receive approval.

CONCLUSIONS OF LAW

The requested NovaChat SGD can be approved because petitioner is capable of utilizing it for communication and because his old SGD no longer is functional.

THEREFORE, it is

ORDERED

That Talk To Me Technologies is hereby authorized to provide a NovaChat 10D+ SGD to petitioner, as requested in PA no. 5123460106 with the notation that it is NovaChat 10D+, not a NovaChat 7, that is being requested. The provider should submit a new prior authorization request along with a copy of this decision for approval.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of April, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 4, 2013.

Division of Health Care Access And Accountability
monicam@drwi.org